IN THE HIGH COUR OF BOMBAY AT GOA

WRIT PETITION NO. 31/2002

The Gomantak Mazdoor Sangh
a Trade Union registered under the
Trade Unions Act, 1926,
represented by its General Secretary
Putu Gaonkar, having his office
at Tisk, Ponda, Goa. ..... Petitioner.

V/s.

1. I.N.S. Hansa, through Officer
Incharge/Varunapuri, Mango Hill
Vasco da Gama, Goa.

2. Association of Sailors,
represented by the Officer-in-Charge
and Administrative Officer,
Varunapuri, Mangor Hill,
Vasco da Gma.

3. Union of India, through the
Secretary, Ministry of Defence,
New Delhi. ..... Respondents.

Mr. G.K. Sardessai, Advocate for the petitioner.

Mr. E. P. Badrinarayanan, Central Government Standing Counsel for respondent No.1.

CORAM : A.P. LAVANDE, J.

Date of reserving the Judgment :
27th April, 2006.

Date of pronouncing the Judgment :
4th May, 2006.

J U D G M E N T :

By this petition, the petitioner, a registered Trade Union espousing the cause of the the employees working at Varunapuri Sailors Quarters, Dabolim has filed this petition, seeking the following reliefs:

"a. For a writ of certiorari or a writ in the nature of certiorari or any appropriate writ, order or direction under Article 226 of the Constitution of India calling for records of the adjudication proceedings in the matter of original application No.304 of 99 from the Central Government Industrial Tribunal and upon perusing the records and examining the legality, correctness and the propriety of the same, to quash and set aside the impugned order of the Central Government Administrative dated 23.07.2001.

b. For an order directing Respondent No.1 to grant regular status to the Petitioners from the date of their initial appointment as casual labourers and/or to regularise their service and grant them financial benefits as par with regular employees in the matter of fixation to pay, grant of annual increment, calculation of leave, pension, gratuity and other terminal benefits including medical reimbursement in terms of the letters and O.M. of Government India, Ministry of Defence.

c. The Petitioner states that in the alternative this Honourable Court may be pleased to order that Respondent No.1 has committed a breach of the provisions of Section 21 read with rule 25 of the

Contract Labour (Abolition and Regulation) Act 1970 in the matter of payment of wages and conditions of service and direct the Respondent No.1 to pay to the workmen employed through the contract in the residential premises, colonies for sweeping and cleaning the same wages as paid to the regular workman doing the same or similar work.

d. In the alternative this Honourable Court may be pleased to order that action of the Respondent No.1 employing workmen through the contractor at their premises/ colonies and paying them lesser wages than the similarly placed employees employed on regular basis is discriminatory and violative of article 14 and 16 of the constitution and direct the Respondent No.1 to pay such employees engaged through the contractor same wages as paid to the regular workmen of the Respondent No.1 doing the same or similar work.

e. Pending the hearing and final disposal of the petition the Respondents be restrained from terminating the services of the Petitioners and/or doing any act which may cause break in service of the Petitioner workmen. “

2. The Transport and Dock Workers Union, espousing the cause of said employees, raised a dispute before the Conciliation Officer (Central) for regularisation in service in the year 1997. Upon failure of the conciliation proceedings, the Central Government vide its letter dated 14.1.1998 refused to make a reference to the

Industrial Tribunal. The said order passed by the Central Government was challenged by Transport and Dock Workers Union by filing Writ Petition No. 331/98. However the said writ petition was withdrawn with liberty to approach the Central Administrative Tribunal. Thereafter, the said Transport and Dock Workers Union and the said employees filed Original Application No. 304/1999 before the Central Administrative Tribunal, Mumbai Bench seeking several reliefs against the respondent No.1. A preliminary objection was taken before the Central Administrative Tribunal that the applicants therein were not employed by INS Hansa and they were not holding any civil post and, therefore, the Central Administrative Tribunal had no jurisdiction to deal with the application. The applicants therein were also asked to produce material in support of their claim of holding civil post. Inspite of the opportunity being given, the applicant did not produce any material in support of their claim, except identity cards issued by the INS Hansa. The Central Administrative Tribunal, after hearing the said Transport and Dock Workers Union and respondent No.1, held that the applicants were not holders of civil posts and in the absence of any material in support of their contention that they were employees of INS Hansa under the Ministry of Defence, held that the Tribunal had no jurisdiction to entertain the application filed by them. The Tribunal relied upon the Judgment of the Apex Court reported in **Union of India vs. Chotelal and ors.,** 1999(I)SCC 554. The petitioner besides challenging the order passed by the Central

Administrative Tribunal has also sought regularisation of the said employees and sought further reliefs as mentioned above.

3. Mr. Sardessai, learned Counsel appearing for the petitioner submitted that Tribunal has committed the jurisdictional error by not giving any opportunity to the applicants to produce material before it, and, therefore, the impugned order dated 23/7/2001 passed by the Central Administrative Tribunal deserves to be quashed and set aside and the matter remanded to the Central Administrative Tribunal to decide the application after giving the opportunity to the applicants to place the relevant material. In the alternative, he submitted that the said applicants have been left with no remedy, in so far as regularisation of their services are concerned, and, therefore, liberty may be granted to the petitioner to seek reference of the dispute against the respondent No.1. In support of his submission, he relied upon an unreported Judgment of this Court dated 18.9.2002 in Writ Petition No.130/1997; **Goa Shops and Industrial Workers Union vs. Chief Secretary, State of Goa and others**. The learned Counsel did not advance any argument in so far as reliefs mentioned at (b), (c) and (d) of the prayer clause are concerned.

4. Mr. Badrinarayanan, the Counsel appearing for the respondent No.1 submitted that the applicants before the Central Administrative Tribunal were not holding any civil posts and,

therefore, the Central Administrative Tribunal, relying upon the Judgment of the Apex Court in **Chotelal's case (supra)** has rightly held that it had no jurisdiction to deal with the application filed by the applicants before it.

5. I have considered the submissions made on behalf of the petitioner and the respondent No.1. I do not find any merit in the submission of Mr. Sardessai that the applicants before the Central Administrative Tribunal were not given any opportunity to lead evidence. The impugned order specifically states that they were asked to place materials in support of their contention and pursuant thereto, they produced only identity cards issued by INS Hansa. Therefore, the petitioner is not entitled to contend now that they were not given opportunity to produce material before the Central Administrative Tribunal in support of their contention. Even on merits, the finding recorded by the Tribunal that since the applicants were not holding any civil post, the Tribunal had no jurisdiction to entertain the application, cannot be faulted. Therefore, no interference is called for in the impugned order passed by the Central Administrative Tribunal. In so far as the prayer made by Mr. Sardessai that liberty may be granted to the petitioners to raise an industrial dispute, I do not find any merit in the said submission in view of the fact that the writ petition filed against order passed by the Central Government refusing to make a reference was withdrawn

with liberty to file appropriate proceedings before the Central Administrative Tribunal. Therefore, there is no question of granting liberty to the petitioner to raise the industrial dispute at this stage. The Judgment in the the case of **Goa Shops and Industrial Workers' Union vs. Chief Secretary and ors., (supra)** is clearly distinguishable. In the present case, the petitioner filed the writ petition challenging the order passed by the Central Government refusing to make reference and withdrew the same with liberty to file appropriate proceedings before the Central Administrative Tribunal. Therefore, the judgment in **Goa Shops and Industrial Workers' Union's case** does not advance the case of the petitioner.

6. In the result, therefore, I do not find any merit in this petition. Consequently, the petition stands dismissed. Rule is discharged. No order as to costs.

A.P. LAVANDE, J.

ssm.